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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,133	02/13/2002	James P. Hearn	8932-292	5436

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EXAMINER

PRIDDY, MICHAEL B

ART UNIT PAPER NUMBER

3732

DATE MAILED: 08/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/073,133

Applicant(s)

HEARN, JAMES P.

Examiner

Michael B Priddy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 4, 5, 7, 15, 18-22, 24 and 25 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16, 17 and 26-38 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 11, 12 and 23 is/are rejected.
- 7) ☒ Claim(s) 3, 6, 8-10, 13 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Benzal et al. (U.S. 5,800,433). Benzal et al. teaches a device for bone surgery (capable of securing parts of a sternum) comprising: a first plate 30 having an upper surface 62 and a second surface 64 capable of contacting a sternum, and at least one hole 90 passing through the upper 62 and second 64 surfaces for receiving a fastener head, the first plate 30 further including a first longitudinal bore 80 defining an axis oriented substantially transversely to the at least one hole 90; a second plate 32 having an upper surface 62 and a second surface 64 capable of contacting a sternum, and an attachment member 40/42/46/48 for fixation to the sternum, the second plate 32 further including a second longitudinal bore 80; and a pin 12 for holding the first 30 and second 32 plates together, wherein the first 30 and second 32 plates are dimensioned to mate with one another such that the first 80 and second 80 longitudinal bores are aligned to receive the pin 12, and removal of the pin 12 from the first 80 and second 80 longitudinal bores could allow for separation of the parts of the sternum; wherein the pin 12 defines at least one longitudinal axis and a cross-section substantially transverse to

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the at least one longitudinal axis, and the cross-section is circular; further, wherein the first plate 30 further includes at least one additional first longitudinal bore 82 having an axis substantially parallel to the first longitudinal bore axis; and the second plate 32 further includes at least one additional second longitudinal bore 82; wherein when the first 30 and second 32 plates are mated with one another, at least one of the first longitudinal bores 80&82 is aligned with at least one of the second longitudinal bores 80&82 to receive the pin 12.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benzal et al. in view of Weaver et al. (U.S. 6,623,486). Benzal et al., as set forth above, teaches all of the limitations of the present invention except the at least one hole is threaded to receive a threaded fastener head. Weaver et al. teaches a bone plating system including a plate having threaded holes 56a & 56b designed to receive screws 20 having threaded heads 22. This combination of threaded holes and screws 10 having threaded heads 22 provides fixed angle relationship between the plate and the screw and reduces the incidence of loosening. It would have been obvious to one of ordinary skill in the art at the time of the present invention to include threads in the holes

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of the plates of Benzel et al. to reduce the incidence of loosening between the screws and the plates.

***Allowable Subject Matter***

Claims 3, 6, 8-10, 13 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 16 and 26-38 are allowed.

***Response to Arguments***

Applicant's arguments with respect to claims 1, 2, 11, 12 and 23 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael B. Priddy whose telephone number is (703) 308-8620. The examiner can normally be reached on Mon.-Fri. 8 a.m. - 5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Michael B. Priddy  
*Michael B. Priddy*  
July 27, 2004

*Kevin Shaver*  
KEVIN SHAVER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700